COURTS AND PROCEDURE—LONG ARM JURISDICTION—NEW JERSEY ADOPTS STREAM-OF-COMMERCE THEORY FOR ESTABLISHING PERSONAL JURISDICTION OVER A FOREIGN MANUFACTURER—*Charles Gendler & Co., Inc. v. Telecom Equipment Corp.*, 102 N.J. 460, 508 A.2d 1127 (1986).

In order for a court to adjudicate a particular case, it must have jurisdiction over the subject matter as well as personal jurisdiction over the specific parties to the dispute.[1] The scope of a state's jurisdiction over a party is defined by the United States Constitution[2] and the long-arm statutes enacted by the individual states.[3] Historically, a state's authority to assert personal jurisdiction focused on the presence of persons and property within its boundaries.[4] As interstate commerce and communication expanded,[5] however, more recent law has focused on "the relationship among the defendant, the forum, and the litigation" in asserting personal jurisdiction over non-resident defendants.[6]

The United States Supreme Court has continued this trend by applying the stream-of-commerce theory as a method for asserting personal jurisdiction over a foreign manufacturer.[7] This theory states that a foreign manufacturer is subject "to jurisdiction whenever its products are deliberately marketed into the 'stream of commerce' notwithstanding the presence of independ-

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[1] J. FRIEDENTHAL, M.K. KANE & A. MILLER, CIVIL PROCEDURE § 3.1, at 96-7 (1985) [hereinafter FRIEDENTHAL]. Subject matter jurisdiction "refers to [a] court's competence to hear and determine cases of the general class to which proceedings in question belong; the power to deal with the general subject involved in the action." BLACK'S LAW DICTIONARY 1278 (5th ed. 1979) (citation omitted). Personal jurisdiction is the "power of a court over the person of a defendant in contrast to the jurisdiction of a court over a defendant's property or his interest therein. . . ." *Id.* at 1030.

[2] The fourteenth amendment states in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1.

[3] FREIDENTHAL, *supra* note 1, § 3.1, at 96-7.

[4] Pennoyer v. Neff, 95 U.S. 714, 722 (1878).

[5] Ripple & Murphy, *World-Wide Volkswagen Corporation v. Woodson: Reflections on the Road Ahead*, 56 NOTRE DAME L.REV. 65, 70 (1980).

[6] Shaffer v. Heitner, 433 U.S. 186, 204 (1977).

[7] Charles Gendler & Co., Inc. v. Nippon Elec. Co., Ltd., 199 N.J. Super. 227, 235, 488 A.2d 1091, 1095 (App. Div. 1985), *rev'd and remanded sub nom.* Charles Gendler & Co., Inc. v. Telecom Equip. Corp., 102 N.J 460, 508 A.2d 1127 (1986).

ent corporations in the chain of distribution."[8] Although both the Appellate Division and Law Division of the Superior Court of New Jersey had previously employed the "stream-of-commerce" theory,[9] this principle was only recently analyzed and adopted by the Supreme Court of New Jersey.[10] In *Charles Gendler & Co., Inc. v. Telecom Equipment Corp.*,[11] the supreme court held that the stream-of-commerce theory would apply as a basis supporting personal jurisdiction over foreign manufacturers and non-resident defendants.[12]

Charles Gendler & Co. (Gendler), a New York corporation, purchased a telephone system for installation at its Belleville, New Jersey premises in April of 1979 from Telecom Equipment Corporation (Telecom).[13] The system was manufactured by Nippon Electric Co., Ltd. (Nippon), a Japanese corporation.[14] Although Nippon is not authorized to conduct business in New Jersey, its wholly-owned subsidiaries, NEC America, Inc. (NEC America) and NEC Telephones, Inc. (NEC Telephones), both New York corporations, act respectively as the importer and distributor of Nippon products.[15] NEC Telephones sold the telephone system to Telecom who in turn sold and installed the system for Gendler.[16] Following the installation of the telephone system, Gendler paid Telecom the amount due.[17] Immediately thereafter, Gendler encountered technical problems with the system, contending it was plagued with defects and was totally

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[8] *Id.*

[9] *See* Coons v. Honda Motor Co., Ltd., 176 N.J. Super. 575, 424 A.2d 466 (App. Div. 1980), *vacated and remanded*, 455 U.S. 996 (1982), *rev'd on other grounds*, 94 N.J. 307, 463 A.2d 921 (1983), *modified*, 96 N.J. 419, 476 A.2d 763 (1984), *cert. denied*, 105 S.Ct. 808 (1985); Certisimo v. Heidelberg Co., 122 N.J. Super. 1, 298 A.2d 298 (Law Div. 1972), *aff'd sub nom.* Van Eeuwen v. Heidelberg Eastern Inc., 124 N.J. Super. 251, 306 A.2d 79 (App. Div. 1973).

[10] *See* Charles Gendler & Co., Inc. v. Telecom Equip. Corp., 102 N.J. 460, 477, 508 A.2d 1127, 1136 (1986).

[11] *Id.* at 460, 508 A.2d at 1127.

[12] *Id.* at 477, 508 A.2d at 1136.

[13] *Id.* at 467, 508 A.2d at 1130.

[14] *Gendler*, 199 N.J. Super. at 229, 488 A.2d at 1092. Nippon's principal place of business is in Tokyo, Japan. *Gendler*, 102 N.J. at 467, 508 A.2d at 1130.

[15] *Gendler*, 102 N.J. at 467, 508 A.2d at 1130.

[16] *Id.* Nippon admitted that the sale to Gendler was not an isolated transaction and that various other Nippon products "may have been sold in New Jersey." *Id.*

[17] Brief and Appendix of Plaintiff-Appellant at Pa1, Charles Gendler & Co., Inc. v. Nippon Elec. Co., Ltd., 199 N.J. Super. 227, 488 A.2d1091 (App. Div. 1985), *rev'd and remanded sub nom.* Charles Gendler & Co., Inc. v. Telecom Equipment Corp., 102 N.J. 460, 508 A.2d 1127 (1986) [hereinafter Appellant's Brief]. The system was installed in June 1979, at which time the balance on the $8,023 purchase price, excluding taxes, was paid. *Id.*

inoperable.[18]

In their purchase agreement with Gendler, "Telecom warranted 'the Equipment against defective parts of [sic] workmanship for a period of one year from the date of its installation.' "[19] Telecom responded to Gendler's complaints regarding the system's improper performance by extending the post installation warranty.[20] Nevertheless, the problems with the telephone system persisted and Gendler commenced suit against Telecom and Nippon alleging breach of warranty.[21] Telecom and Nippon both received service of process; however, only Nippon contested jurisdiction.[22] In answering the complaint against it, Nippon contended that it did not have sufficient business contacts for New Jersey courts to assert personal jurisdiction.[23] The law division held for Nippon, thereby granting their motion to dismiss.[24]

The appellate division, however, utilized the stream-of-commerce theory as espoused in earlier federal and New Jersey cases and reversed the lower court's ruling.[25] According to this theory,

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[18] *Id.* at 1. The plaintiff-appellant claimed the "equipment was defective, unmerchantable and unfit for the ordinary uses and purposes for which it was intended, namely telephonic communication." *Id.*

[19] *Gendler*, 102 N.J. at 467, 508 A.2d at 1130. The contract additionally stated that resolution of any conflicts which may arise under the contract would be decided under the law of New York. *Id.*

[20] *Gendler*, 199 N.J. Super. at 230, 488 A.2d at 1092.

[21] *Id.* The plaintiff's complaint alleged "breach by both Nippon and Telecom, of implied warranties of merchantability and fitness for the ordinary purposes and uses for which the telephone system was intended." *See* Appellant's Brief, *supra* note 17, at 2.

[22] *See Gendler*, 102 N.J. at 467, 508 A.2d at 1130.

[23] *See Gendler*, 199 N.J. Super. at 229, 488 A.2d at 1092. Nippon claimed that it did not solicit business or retain a sales force in the state. *See Gendler*, 102 N.J. at 468, 508 A.2d at 1131. In opposition to Nippon's motion, Gendler "asserted that Nippon had under the relevant New Jersey and United States Supreme Court judicial precedents, exhibited sufficient 'minimum contacts' with the New Jersey forum . . ." *See* Appellant's Brief, *supra* note 17, at 3.

[24] *Gendler*, 102 N.J. at 467, 508 A.2d at 1130. In rendering her decision, Judge Loftus stated: "[t]he mere assertion or citation. . .that Nippon manufactures a telephone system for sale throughout the world, without any further authority or facts supporting any direct flow into the State of New Jersey, is not enough to hold that this Court has in personam jurisdiction over the defendant Nippon." Appellant's Brief, *supra* note 17, at Appendix T 12/16/83 at 10-11. Furthermore, the Judge opined that "the minimum contact test is not satisfied simply because a product seems to come to rest in the forum state." *Id.* at T 12/16/83 at 13. After Judge Loftus' decision, Telecom settled with Gendler. *See* Appellant's Brief, *supra* note 17, at Appendix Pa34.

[25] *See Gendler*, 199 N.J. Super. at 239-40, 488 A.2d at 1097-98. *See also* Coons v. Honda Motor Co., Ltd., 176 N.J. Super. 575, 424 A.2d 466 (App. Div. 1980), *vacated and remanded*, 455 U.S. 996 (1982), *rev'd on other grounds*, 94 N.J. 307, 463 A.2d

a foreign manufacturer would be subject to the court's jurisdiction whenever its products are deliberately placed into the market even though there may be independent corporations in the distribution chain.[26] The appellate division found that the existence of Nippon's products in New Jersey was not fortuitous, but in fact was the result of a deliberate marketing program executed through its wholly-owned subsidiaries.[27] The appellate division ruled, therefore, that "Nippon could reasonably anticipate being involved in litigation" in New Jersey.[28] Thus, marketing its products through subsidiaries would not insulate Nippon from personal jurisdiction.[29] Nippon appealed the decision and certification was granted by the Supreme Court of New Jersey.[30]

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921 (1983), *modified*, 96 N.J. 419, 476 A.2d 763 (1984), *cert. denied*, 105 S.Ct. 808 (1985); Certisimo v. Heidelberg Co., 122 N.J. Super. 1, 298 A.2d 298 (Law Div. 1972), *aff'd sub nom.* Van Eeuwen v. Heidelberg Eastern Inc., 124 N.J. Super. 251, 306 A.2d 79 (App. Div. 1973).

26 *Gendler*, 199 N.J. Super. at 235, 488 A.2d at 1095.

27 *Id.* at 240, 488 A.2d at 1098. The court noted that "[t]he subsidiaries are the merchandising tools, if not the tentacles of their commercial parent." *Id.* at 230, 488 A.2d at 1092.

28 *Id.* at 240, 488 A.2d at 1098.

29 *Id.* In arriving at its decision, the appellate division relied on seven factors:

> (1) while the extent of Nippon's interjection of activities into New Jersey has not been established, it sent an alleged defective product into the world market with knowledge that harm could occur wherever the defect was manifest; (2) while Nippon's burden in defending an action in New Jersey is significant, plaintiff's burden in suing Nippon in Japan exceeds that of Nippon in defending in New Jersey; (3) New Jersey has a compelling interest in regulating the conduct of manufacturers who send alleged defective products into New Jersey; (4) Nippon has shown no conflict with any foreign interests of Japan sufficient to outweigh New Jersey's interest in litigating plaintiff's claim; (5) New Jersey appears to be the most efficient forum to resolve the dispute. The evidence must be produced in New Jersey and the witnesses undoubtedly reside here or in the vicinity. New Jersey law would be likely to control; (6) availability of the New Jersey forum is important to plaintiff's chances for convenient and effective relief, and (7) while a Japanese forum may be available, it does not represent a practical alternative to plaintiff.

Id. at 239-40, 488 A.2d at 1097-98 (citation omitted).

The court also noted that Gendler had "served the summons and complaint on Nippon by certified mail addressed to Nippon's subsidiary, NEC Telephones, in Melville, New York." *Id.* at 229, 488 A.2d at 1092. Although this method of service on the parent corporation is insufficient, the court concluded that this would not be a basis upon which to dismiss the complaint. *Id.* at 240-41, 488 A.2d at 1098. The appellate division held therefore that Gendler's complaint against Nippon be reinstated upon proper service of process in accordance with New Jersey law. *Id.* at 241, 488 A.2d at 1098. Interestingly, the trial judge did not address this issue. *See id.* at 240, 488 A.2d at 1098.

30 Charles Gendler & Co., Inc. v. Nippon Elec. Co., Ltd., 102 N.J. 318, 508 A.2d 200 (1985).

The court adopted the stream-of-commerce theory as a valid basis for New Jersey courts to assert personal jurisdiction over foreign manufacturers that "knew or reasonably should have known of the distribution system through which its products were being sold in the forum state."[31] The court, however, due to the paucity of facts,[32] reversed the appellate division's decision and remanded the matter to the trial court to determine whether Nippon was sufficiently aware of the distribution of its products in New Jersey.[33]

A state's ability to assert its jurisdiction over a party is set forth in the United States Constitution as well as its long-arm statute.[34] New Jersey's long-arm statute,[35] for example, allows service of process on foreign defendants,[36]subject only to the utmost limit of the due process clause of the fourteenth amendment.[37] Guidance for determining the constitutional limits of a state's long-arm statute has evolved from the United States Supreme Court's holding in *Pennoyer v. Neff*[38] decided in 1878.

In *Pennoyer*, the defendant, Neff, a California resident, was sued in Oregon for unpaid attorney fees.[39] Upon Neff's failure to appear for trial, the trial court attached and sold his Oregon property to Pennoyer at a sheriff's auction.[40] Neff subsequently sought to eject Pennoyer from the property claiming that the Oregon state court's judgment was invalid in that it lacked jurisdiction over both Neff and his property.[41] In upholding Neff's

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31 *Gendler*, 102 N.J. at 480, 508 A.2d at 1137 (citations omitted).

32 *Id.* at 483, 508 A.2d at 1139.

33 *Id.* at 483-84, 508 A.2d at 1139-40.

34 FRIEDENTHAL, *supra* note 1, § 3.1, at 97.

35 N.J. CT. R. 4:4-4.

36 N.J. CT. R. 4:4-4(c).

37 *See* International Shoe Co. v. Washington, 326 U.S. 310, 311 (1945) (addressing whether corporation is amenable to state court proceedings consistent with "the limitations of the due process clause of the Fourteenth Amendment"); *Gendler*, 102 N.J. at 460, 508 A.2d at 1131 ("A state court's assertion of personal jurisdiction over a defendant must comport with the due-process requirement of the fourteenth amendment. [New Jersey's long arm statute] permits service of process on nonresident defendants 'consistent with due process of law.' ").

38 95 U.S. 714 (1878).

39 *Id.* at 719; *see also* Ripple & Murphy, *supra* note 5, at 69 n.33 (setting forth facts of *Pennoyer*).

40 *Pennoyer*, 95 U.S. at 719-20. Neff was not served personally with notice; however, pursuant to an Oregon statute notice was given solely by publication in Oregon newspapers. *Id. See also* Kurland, *The Supreme Court, The Due Process Clause and the In Personam Jurisdiction of State Courts—From Pennoyer to Denckla: A Review*, 25 U. CHI. L. REV. 569, 571 (1958) (discussing *Pennoyer*).

41 *See Pennoyer*, 95 U.S. at 720.

claim, the Supreme Court ruled that each of the individual states possesses "exclusive jurisdiction and sovereignty over the persons and property within its territory."[42] Conversely, no state would be allowed to exert its governance over persons and property lying outside its territory.[43] Therefore, "each state would be exclusively powerful over the persons and property inside its borders and absolutely powerless over all persons and property outside those borders."[44]

In *International Shoe Co. v. Washington*,[45] the Supreme Court recognized that the jurisdictional parameters set forth in *Pennoyer* did not function well given the dramatic increase in interstate commerce throughout the twentieth century.[46] The controversy in *International Shoe* arose from the International Shoe Company's unwillingness to pay unemployment compensation taxes assessed by the state of Washington.[47] International Shoe was a Delaware corporation with its headquarters in Missouri.[48] Although International Shoe retained no stock or merchandise in Washington, did not maintain an office in the state, and did not enter into contracts for merchandise there, it employed several salesmen who were residents of Washington.[49] The price of its merchandise was predetermined by International Shoe and all orders were transmitted by the salesmen to International Shoe's headquarters.[50] Upon assessing International Shoe for unem-

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42 *Id.* at 722.

43 *Id.*

44 FRIEDENTHAL, *supra* note 1, § 3.3, at 100. Specifically, the *Pennoyer* Court held that:

> Every State owes protection to its own citizens; and, when non-residents deal with them, it is a legitimate and just exercise of authority to hold and appropriate any property owned by such non-residents to satisfy the claims of its citizens. It is in virtue of the State's jurisdiction over the property of the non-resident situated within its limits that its tribunals can inquire into that non-resident's obligations to its own citizens, and the inquiry can then be carried only to the extent necessary to control the disposition of the property. If the non-resident have [sic] no property in the State, there is nothing upon which the tribunals can adjudicate.

Pennoyer, 95 U.S. at 723-24.

45 326 U.S. 310 (1945).

46 *See Gendler*, 102 N.J. at 469, 508 A.2d at 1131.

47 *International Shoe*, 326 U.S. at 312.

48 *Id.* at 313.

49 *Id.* Moreover, International Shoe did not make deliveries through intrastate commerce of merchandise in Washington. *Id.*

50 *Id.* at 314. Salesmen were not authorized to enter into contracts, all orders were accepted or rejected at the Missouri headquarters, and orders were "shipped f.o.b. from points outside Washington to the purchasers within the state." *Id.*

ployment compensation taxes, International Shoe refused to pay, contending that they were neither a Washington corporation nor did they conduct business within that state.[51]

The *International Shoe* Court abandoned the antiquated "presence test" articulated in *Pennoyer* and adopted a more flexible minimum contacts analysis.[52] The *International Shoe* Court held that the principle focus in determining if a state has jurisdiction over a non-resident defendant is whether the defendant has "certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' "[53] Moreover, according to the Court, minimum contacts must be scrutinized in a manner such that the assertion of jurisdiction is consistent with the "fair and orderly administration of the laws which it was the purpose of the due process clause to insure."[54]

Since the *International Shoe* decision, the Supreme Court has refined the guidelines for determining whether the minimum contacts, fair play, and substantial justice requirements have been met.[55] In *McGee v. International Life Insurance Co.*,[56] a California resident brought suit in California against a Texas-based insurance company for benefits due under a life insurance policy.[57] The insurance company was not represented in California by any of its agents nor did it have an office in the state.[58] The defendant, therefore, contested the California court's assertion of jurisdiction.[59] In rendering its decision, the Supreme Court

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51 *Id.* at 312. International Shoe contended that the unemployment compensation tax violated the due process clause of the fourteenth amendment and imposed an unconstitutional burden on interstate commerce. *Id.* at 313. International Shoe further contended that service of process, affected by personally serving a salesman and by registered mail to the Missouri headquarters, was improper. *Id.* at 312.

52 *See* FRIEDENTHAL, *supra* note 1, § 3.10, at 123-4.

53 *International Shoe*, 326 U.S. at 316 (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)).

54 *Id.* at 319.

55 *See, e.g.*, Shaffer v. Heitner, 433 U.S. 186, 207-09 (1977) (determination of minimum contacts is dependent on relationship between defendant and forum state as well as location of defendant's property); Hanson v. Denckla, 357 U.S. 235, 253 (1958) (defendant on notice that personal jurisdiction could be asserted when "purposefully avail[ing] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws") (citation omitted).

56 355 U.S. 220 (1957).

57 *Id.* at 221-22.

58 *Id.* at 222.

59 *Id.* at 224. Basing jurisdiction on the state's long-arm statute, the California court allowed service of process by registered mail on International Life at its

recognized the "clearly discernible" trend toward expanding a state's jurisdiction over foreign corporations.[60] Accordingly, since the insurance contract was delivered in California, the Court ruled that it was "sufficient for purposes of due process that the suit was based on a contract which had substantial connection" with California.[61]

The constitutional parameters of the "minimum contacts" theory articulated in *International Shoe*[62] and *McGee*[63] were delineated in *World-Wide Volkswagen Corp. v. Woodson*.[64] In *World-Wide Volkswagen*, the plaintiffs, while driving from New York to Arizona, were injured in Oklahoma when their Audi automobile burst into flames as a result of a collision.[65] Utilizing the Oklahoma long-arm statute, the plaintiffs brought suit against the New York-based dealer from whom they purchased the automobile, Seaway Volkswagen, Inc., and the regional Volkswagen Audi distributor, World-Wide Volkswagen Corp. (World-Wide).[66]

The Oklahoma Supreme Court held that jurisdiction was proper regardless of the fact that World-Wide did not sell any cars in the state.[67] The Oklahoma court reasoned that, since automobiles by their nature are mobile, it was foreseeable that the defendant's products would be used in Oklahoma.[68] On appeal, the United States Supreme Court, in reversing the Oklahoma court, reasoned that the minimum contacts require-

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Texas headquarters. *Id.* at 221. Judgment was obtained in California, and the plaintiff unsuccessfully sought to enforce the judgment in the Texas courts. *Id.*

60 *Id.* at 222.

61 *Id.* at 223 (citations omitted). The Court further justified its ruling by noting that "the premiums were mailed from [California] and the insured was a resident of that State when he died. It cannot be denied that California has a manifest interest in providing effective means of redress for its residents when their insurers refuse to pay claims." *Id.* Furthermore, the Court noted that while "there may be inconvenience to the insurer if it is held amenable to suit in California where it had this contract but certainly nothing [sic] which amounts to a denial of due process." *Id.* at 224 (citation omitted).

62 *See supra* notes 45-54 and accompanying text (discussing *International Shoe*).

63 *See supra* notes 56-61 and accompanying text (discussing *McGee*).

64 *See* 444 U.S. 286, 291-94 (1980).

65 *Id.* at 288, 289-90.

66 *Id.* The plaintiffs also brought a products liability suit against the manufacturer of the car, Audi NSU Auto Union Aktiengesellschaft, and the importer, Volkswagen of America, Inc. *Id.* at 288. Only World-Wide Volkswagen Corp. and Seaway Volkswagen, Inc.—the regional distributor and automobile dealer respectively—sought review of the District Court's ruling. *Id.* at n.3.

67 *Id.* at 289-90.

68 *Id.* at 290.

ments set forth in *International Shoe* and its progeny were not met because World-Wide had done nothing to promote the sale of its products in Oklahoma.[69]

In *World-Wide Volkswagen*, the United States Supreme Court adopted a two-tiered approach to test the constitutionality of asserting personal jurisdiction.[70] The first tier involved a determination of whether or not there were sufficient minimum contacts with the forum jurisdiction.[71] If a court determined that minimum contacts existed, then the second tier of the analysis would focus on the issues of " 'fair play and substantial justice.' "[72] When confronted with such a circumstance, a court must balance these factors in determining whether it is fair to subject a foreign defendant to jurisdiction under a state's long-arm statute.[73]

In applying this analysis, the Court held that the state did not have the necessary minimum contacts with the automobile dealer and the distributor to assert personal jurisdiction.[74] Since

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69 *Id.* at 298. In addition, the Court opined that:

> [t]here is no evidence of record that any automobiles distributed by World-Wide are sold to retail customers outside [the New York] tristate area. It is foreseeable that the purchasers of automobiles sold by World-Wide and Seaway may take them to Oklahoma. But the mere "unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State."

Id. (citation omitted).

Justice Blackmun, however, argued in dissent that, because the automobile by its nature is mobile, Oklahoma's jurisdiction was proper in that the retailer and distributor could reasonably anticipate that the car would be in Oklahoma. *Id.* at 318 (Blackmun, J., dissenting). According to Justice Blackmun, "[t]o expect that any new automobile will remain in the vicinity of its retail sale—like the 1914 electric driven car by the proverbial 'little old lady'—is to blink at reality." *Id.*

70 *See id.* at 291-92.

71 *Id.* at 291.

72 *Id.* at 292 (quoting *International Shoe*, 326 U.S. at 316).

73 *See id.* The Court stated that the "relationship between the defendant and the forum must be such that it is 'reasonable. . .to require the corporation to defend the particular suit which is brought there.' " *Id.* (citation omitted). The Court added that

> [i]mplicit in this emphasis on reasonableness is the understanding that the burden on the defendant, while always a primary concern, will in an appropriate case be considered in light of other relevant factors, including the forum State's interest in adjudicating the dispute; the plaintiff's interest in obtaining convenient and effective relief, at least when that interest is not adequately protected by the plaintiff's power to choose the forum; the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies.

Id. (citations omitted).

74 *Id.* at 299. The Court summarized that "[i]n short, [the plaintiffs] seek to base

insufficient contacts were found to exist, the Court concluded that it was irrelevant to consider, for the purpose of a determination as to *forum non conveniens*,[75] whether or not the forum chosen by the plaintiff would be a burden to the defendant.[76] The plaintiffs, however, had argued that it was entirely foreseeable for the defendants to anticipate that an automobile purchased in one state would inevitably be driven into another state.[77] This argument was rejected by the Court when it stated that foreseeability did not equate to the "mere likelihood" that the car would be driven in another state.[78] Instead, the Court would require "that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there."[79]

Focusing on the issue of foreseeability, the Court held that absent "affiliating circumstances,"[80] a state could not assert jurisdiction over a non-resident defendant.[81] The Court further held that "[t]he forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State."[82] The Court therefore concluded that if a defendant purposefully avails itself of a national marketplace for its products via either direct or indirect distribution methods, rather than through an isolated occurrence or unilateral act by the de-

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jurisdiction on one, isolated occurrence and whatever inferences can be drawn therefrom: the fortuitous circumstance that a *single* Audi automobile, sold in New York to New York residents, *happened* to suffer an accident while passing through Oklahoma." *Id.* at 295 (emphasis added).

75 *Forum non conveniens* "refers to discretionary power of the court to decline jurisdiction when convenience of parties and ends of justice would be better served if action were brought and tried in another forum." BLACK'S LAW DICTIONARY 589 (5th ed. 1979) (citations omitted).

76 *World-Wide Volkswagen*, 444 U.S. at 294.

77 *Id.* at 295.

78 *Id.* at 297.

79 *Id.* (citations omitted).

80 *Id.* at 295. The Court noted that neither defendant carried on any activity whatsoever in Oklahoma. They close no sales and perform no services there. They avail themselves of none of the privileges and benefits of Oklahoma law. They solicit no business there either through salespersons or through advertising reasonably calculated to reach the State. Nor does the record show that they regularly sell cars at wholesale or retail to Oklahoma customers or residents or that they indirectly, through others, serve or seek to serve the Oklahoma market.

Id.

81 *Id.*

82 *Id.* at 297-98 (citation omitted).

fendant, it must be made to answer claims in the foreign jurisdictions in which its goods are sold.[83]

In New Jersey, development of the stream-of-commerce theory preceded the Supreme Court's landmark holding in *World-Wide Volkswagen*.[84] The extension of personal jurisdiction over a foreign manufacturer was first considered by the law division in *Certisimo v. Heidelberg Co.*[85] In *Certisimo*, the plaintiff was injured while using a printing press manufactured by Heidelberger Druckmaschinen Aktiengessellschaft (HDAG), a West German corporation.[86] HDAG argued that it had "*no* contacts" with the state of New Jersey,[87] and therefore, the complaint against it should be dismissed because of "insufficiency of process."[88] Moreover, HDAG argued that it did not solicit business or advertise its products in the United States.[89] Instead, the corporation sold their products to an independent entity, Heidelberg Eastern, in West Germany, who then imported and sold the printing press to the plaintiff's employer in the United States.[90]

In rendering its decision, the New Jersey court noted that personal jurisdiction could be asserted when a defendant volun-

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[83] *Id.* at 297, 299. The Court noted that when these factors are present, a corporation "has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State." *Id.* at 297.

The Supreme Court recently reaffirmed the stream-of-commerce theory. *See Burger King Corp. v. Rudzewicz*, 105 S. Ct. 2174 (1985). In that case, the Court held that it was "presumptively not unreasonable" to subject a foreign corporation conducting business in a forum and "avail[ing] [itself] of the privilege of conducting business there "to the forum's jurisdiction." *Id.* at 2184. The Supreme Court further opined that "it may well be unfair to allow [the foreign corporation] to escape having to account. . .for consequences that arise proximately from such activities; the Due Process Clause may not readily be wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed." *Id.* at 2183.

[84] *Gendler*, 102 N.J. at 477, 508 A.2d at 1136.

[85] 122 N.J. Super. 1, 298 A.2d 298 (Law Div. 1972), *aff'd sub nom.* Van Eeuwen v. Heidelberg Eastern Inc., 124 N.J. Super. 251, 306 A.2d 79 (App. Div. 1973).

[86] *Id.* at 4, 298 A.2d at 300. The plaintiff, Joseph Certisimo, claimed that he injured his hands because the printing press "was 'negligently, carelessly and recklessly designed, constructed, manufactured, inspected and maintained.'" *Id.*

[87] *Id.* at 3, 298 A.2d at 299 (emphasis in original).

[88] *Id.* The plaintiff initially sued the distributor of the press, Heidelberg Eastern, Inc., a Delaware corporation. HDAG was brought into the suit as a third-party defendant. *Id.*

[89] *Id.* at 4, 298 A.2d at 300.

[90] *Id.* HDAG claimed that Heidelberg Eastern was not its agent in this or any transaction. In addition, HDAG stated, by affidavit, that it had no ownership or financial interests, no control, and no supervision over Heidelberg Eastern's distribution policy. *Id.*

tarily acted in a manner calculated to have a substantial connection and effect in the forum state.[91] The court reasoned that by selling its products to Heidelberg Eastern, an American distributor, HDAG was deriving the economic benefits of the marketplace in the states where the product was distributed.[92] It was therefore reasonable and foreseeable, the court asserted, that HDAG would be subject to New Jersey jurisdiction when its product caused injury in New Jersey.[93] As a result, the court opined that to bar an injured plaintiff from recovery because the manufacturer used a middleman as a distributor was "to allow a legal technicality to subvert justice and economic reality in the worst sense."[94] Thus, the court ruled HDAG would be subject to the jurisdiction of the New Jersey courts.[95]

The Appellate Division of the Superior Court of New Jersey examined the criteria for extending personal jurisdiction over a foreign corporation shortly after the United States Supreme Court's *World-Wide Volkswagen* decision.[96] In *Coons v. American Honda Motor Co., Ltd.*,[97] the plaintiff was severely burned when the gas cap of his Honda motorcycle opened upon impact causing a fire.[98] The plaintiff brought suit against the manufacturer, Honda Motor Company Ltd. of Japan (Honda), a Japanese corporation, and its wholly-owned American distributor, American Honda Motor Company (American Honda), a corporation au-

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91 *Id.* at 7-8, 298 A.2d at 302.

92 *See id.* at 10, 298 A.2d at 303.

93 *Id.* at 14, 298 A.2d at 305.

94 *Id.* at 12, 298 A.2d at 305.

95 *Id.* at 14, 298 A.2d at 305. In rendering its decision, the *Certisimo* court relied on *Gray v. American Radiator and Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N.E.2d 761 (1961). *See Certisimo*, 122 N.J. Super. at 9-10, 298 A.2d at 302-03. In *Gray*, an Ohio corporation manufactured a safety valve which was sold to an independent corporation outside the state of Illinois and subsequently installed in a water heater. *Id.* at 434, 176 N.E.2d at 762. Thereafter, the heater was sold to an Illinois resident who incurred injuries when the heater exploded due to the safety valve's apparent failure. *Id.* The plaintiff brought suit against the Ohio corporation in Illinois. *Id.* In holding for the plaintiff, the *Gray* court ruled that "[w]here the alleged liability arises, as in this case, from the manufacture of products presumably sold in contemplation for use here, it should not matter that the purchase was made from an independent middleman or that someone other than the defendant shipped the product into this State." *Id.* at 442, 176 N.E.2d at 766.

96 *See* Coons v. Honda Motor Co., Ltd., 176 N.J. Super. 575, 424 A.2d 446 (App. Div. 1980), *vacated and remanded*, 455 U.S. 996 (1982), *rev'd on other grounds*, 94 N.J. 307, 463 A.2d 921 (1983), *modified*, 96 N.J. 419, 476 A.2d 763 (1984), *cert. denied*, 105 S. Ct. 808 (1985).

97 176 N.J. Super. 575, 424 A.2d 446 (App. Div. 1980).

98 *Id.* at 577, 424 A.2d at 447.

thorized to conduct business in New Jersey.[99] Honda claimed that there was no basis for personal jurisdiction.[100] The trial court, however, reasoned, *inter alia*, that Honda had minimum contacts with New Jersey, and therefore, the state could assert personal jurisdiction over Honda.[101]

The appellate division affirmed and held that where "the manufacturer-distributor relationship is an active one and explicitly designed to provide and ensure the sale of the foreign corporation's products," the necessary minimum contacts requirement was satisfied.[102] The court reached this decision based in part upon the reasoning found in the *Certisimo* and *World-Wide Volkswagen* decisions; namely, the court was able to find sufficient contacts through the relationship between Honda and American Honda.[103] The court determined that Honda could not entirely insulate itself from lawsuits stemming from its negligently manufactured products by the use of a multi-level corporate distribution structure.[104] This reasoning was viewed by the court as being in comport with the logical and persuasive dictum found in the *World-Wide Volkswagen* decision.[105] The court therefore concluded that sufficient necessary minimum contacts were present in the relationship between the codefendants for the court to assert personal jurisdiction over the parent corporation.[106]

Six years after the appellate division adopted the stream of commerce theory, the New Jersey Supreme Court, for the first time, was faced with facts similar to those in *Certisimo* and

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[99] *Id.* Suit was filed four years, to the day, after the accident. *See id.* Both Honda and American Honda filed motions for summary judgment, claiming the expiration of the two-year statute of limitations. *Id.* In a separate opinion, the trial court granted summary judgment in favor of American Honda. *Id.* The trial court, however, denied Honda's motion for summary judgment and ruled "that the two-year statute of limitations had been tolled by N.J.S.A. 2A:14-22 because Honda was a foreign corporation that was not 'represented' in New Jersey by a person upon whom process could be served." Coons v. American Honda Motor Co., Inc., 94 N.J. 307, 310, 463 A.2d 921, 922 (1983).

There was a series of appeals involving both Honda and American Honda following the appellate division's opinion. *See* Coons v. American Honda Motor Co., Inc., 96 N.J. 419, 421-22, 476 A.2d 763, 765 (1984) (detailing procedural history of case).

[100] *Coons*, 176 N.J. Super. at 577, 424 A.2d at 447.

[101] *Id.* at 579-81, 424 A.2d at 448.

[102] *Id.* at 580, 424 A.2d at 448.

[103] *Id.* at 580-81, 424 A.2d at 448-49.

[104] *Id.* at 581, 424 A.2d at 449.

[105] *Id. See also supra* notes 64-83 and accompanying text (discussing *World-Wide Volkswagen*).

[106] *Coons*, 176 N.J. Super. at 581, 424 A.2d at 449.

Coons.[107] In *Gendler*, Justice Pollack, writing for a unanimous court, began his analysis by discussing the constitutional requirements of personal jurisdiction set forth in the fourteenth amendment and prior case law.[108] The *Gendler* court outlined the traditional minimum contacts standards set forth by the Supreme Court in *International Shoe*.[109] The court noted that the minimum contacts requirement served to protect a foreign defendant from unfair and unreasonable subjection to a forum state's long-arm statute.[110] The court's primary concern in its minimum contacts analysis was balancing the interests of the non-resident defendant's burden of defending the suit against the plaintiff's " 'interest in obtaining convenient and effective relief. . . .' "[111]

The *Gendler* court also addressed the development of the stream-of-commerce theory.[112] Contemplating the rise of international and interstate trade, the court viewed the stream-of-commerce theory as a necessary means of expanding state jurisdiction over foreign corporations.[113] Thus, the court followed the appellate and law divisions in adopting the stream-of-commerce theory.[114] Relying on *Certisimo*, the *Gendler* court ruled that a manufacturer which penetrated a state's market would be subject to personal jurisdiction notwithstanding the role of independent intermediaries.[115] The court, therefore, opined that regardless of the degree of control over the distribution system, a manufacturer would be subject to personal jurisdiction if it had

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107 *See Gendler*, 102 N.J. at 466-67, 508 A.2d at 1130.

108 *See id.* at 469, 508 A.2d at 1131.

109 *Id.* at 469-70, 508 A.2d at 1131-32. *See also supra* notes 45-54 and accompanying text (discussing *International Shoe*).

110 *Gendler*, 102 N.J. at 470, 508 A.2d at 1132 (citing *International Shoe*, 326 U.S. at 317).

111 *Id.* at 472, 508 A.2d at 1133 (quoting *World-Wide Volkswagen*, 444 U.S. at 292). Additionally, the court recognized other significant factors, including the extent to which the defendant conducted business in the forum state, as well as the forum state's interest in adjudicating disputes involving its residents. *Id.* at 472-73, 508 A.2d at 1133. The court opined that a state's interests in subjecting a defendant to its long-arm statute was directly proportional to the business activity in the state. *See id.* at 472, 508 A.2d at 1133.

112 *See id.* at 474-78, 508 A.2d at 1134-36.

113 *Id.* at 474, 508 A.2d at 1134.

114 *Id.* at 476-77, 508 A.2d at 1135-36. The court noted that several other states have incorporated the stream-of-commerce theory into their legislative statutes for asserting jurisdiction over foreign defendants. *Id.* at 477, 508 A.2d at 1136.

115 *Id.* at 480, 508 A.2d at 1137. In its ruling, the court distinguished local retailers from major distributors and manufacturers. *Id.* at 477, 508 A.2d at 1136. Manufacturers usually initiate the distribution pyramid, thereby serving a larger market in order to penetrate as many forums as possible, whereas the retailer's foreseeable market area is "constrained." *Id.*

actual or constructive knowledge of the means through which its products were marketed.[116] Accordingly, the court held that if a manufacturer knows that its products are being marketed nationwide, it "should reasonably expect that those products would be sold throughout the fifty states and that it will be subject to the jurisdiction of every state."[117]

Based on the foregoing analysis, the court concluded that because the case involved the sale of a Nippon product in New Jersey, it "need not decide what minimum contacts would be required to satisfy the stream-of-commerce theory if plaintiff's cause of action were [sic] unrelated to defendant's contacts with the forum."[118] The court also noted that Nippon's contacts with the state would allow New Jersey to exercise "specific jurisdiction" rather than "general jurisdiction."[119]

Continuing its analysis, the *Gendler* court refuted Nippon's assertion that the stream-of-commerce theory applies only to cases involving personal injuries.[120] The court noted that while a state has a greater interest in providing a forum to all residents incurring personal injury, there was "no basis for allowing the nature of the injury to preclude the application of the stream-of-commerce theory."[121] The court, therefore, ruled that a foreign manufacturer causing only property damage or economic loss would still be subject to the forum state's jurisdiction.[122]

The *Gendler* court also addressed New Jersey's considerable interest in serving as the forum in the present action.[123] New Jersey was the forum in which the plaintiff maintained its principal office, where the products were installed, and where witnesses were located.[124] Additionally, the court rejected Nippon's proposal of New York as an alternative forum stating that New

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116 *Id.* at 480, 508 A.2d at 1137.

117 *Id.* at 481, 508 A.2d at 1138.

118 *Id.* at 482, 508 A.2d at 1138-39.

119 *Id.* 508 A.2d at 1138. The United States Supreme Court has defined "specific jurisdiction" and "general jurisdiction". *See* Helicopteros Nacionales de Columbia v. Hall, 466 U.S. 408 (1984). Specific jurisdiction is found to exist "when a State exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum. . . ." *Id.* at 414 n.8 (citation omitted). General jurisdiction is defined as a "State exercis[ing] personal jurisdiction over a defendant in a suit not arising out of or related to the defendant's contacts with the forum. . . ." *Id.* at 414 n.9 (citation omitted).

120 *Gendler*, 102 N.J. at 482-83, 508 A.2d at 1139.

121 *Id.* at 483, 508 A.2d at 1139.

122 *Id.*

123 *See id.* at 483-84, 508 A.2d at 1139-40.

124 *Id.* at 484, 508 A.2d at 1140. In addition, Telecom, the installer of the tele-

York was equally inconvenient to all the parties.[125] Moreover, the court noted that the "only advantage that New York offers to Nippon is that the present action is not pending in that state."[126]

The paucity of facts developed at the trial level, however, elicited no evidence that Nippon had actual or constructive knowledge of the means by which its products entered the forum state.[127] The only evidence that was developed relating to the stream-of-commerce theory was that Nippon "manufacture[d] 'telephone equipment for sale to companies throughout the world.' "[128] Thus, the court reversed the appellate division's determination that there was a sufficient basis for sustaining jurisdiction and remanded the matter to the law division for further discovery.[129] The facts necessary for determining the appropriateness of jurisdiction on remand, according to the court, include the degree of awareness Nippon had of its distribution system and whether the transaction was an isolated or fortuitous act or was the result of a formal system for distribution of Nippon's telephone systems.[130]

Significantly, the *Gendler* ruling left unanswered the question as to what degree of corporate activity constitutes actual or constructive awareness. Direction concerning the boundaries of corporate awareness will inevitably surface in future litigation, whether in New Jersey or in other jurisdictions.[131] While in *Gend-*

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phone system, is also located in New Jersey and, although it was initially a defendant, could now be called upon as a potential witness. *Id.*

125 *Id.* The court noted that although Nippon suggested New York as an alternative forum—presumably because the contract stipulated that New York law would control—that location would be equally inconvenient for Nippon as they are located in Japan. *Id. But see supra* note 29 (appellate division stating that "New Jersey law would be likely to control").

126 *Id.*

127 *Id.* at 483, 484, 508 A.2d at 1139.

128 *Id.* at 483, 508 A.2d at 1139.

129 *Id.*

130 *Id.* at 483-84, 508 A.2d at 1139. Apparently, the supreme court inadvertently overlooked its earlier statement that Nippon admitted, during oral argument, the sale to Gendler was not an isolated transaction. *See supra* note 16.

131 Charles Gendler & Company and Nippon settled out of court on August 13, 1986 for $4,000. Interview with Stephen W. Gruhin, Esq., Gruhin & Gruhin, Belleville, New Jersey (Aug. 14, 1986).

The United States Supreme Court recently ruled that it would be unfair and unreasonable for a California court to assert personal jurisdiction over a foreign defendant who was aware that some of its products, placed into the stream-of-commerce, may possibly reach the forum state. Asahi Metal Indus. Co., Ltd. v. Superior Court of California, 107 S. Ct. 1026 (1987). In *Asahi Metal*, a motorcyclist and his passenger were involved in a collision with a tractor on a California highway. *Id.* at 1029. The motorcyclist brought suit in a product liability action against several

ler the manufacturer used a wholly-owned subsidiary to distribute its products,[132] future litigation may entail a more tenuous distribution chain. A manufacturer's awareness of the product's distribution chain, therefore, may be determined by the number of middlemen, the size and scope of their operations, and the frequency with which the manufacturer conducts business with them. The court, in holding that a manufacturer could not insulate itself behind an elaborate distribution chain,[133] provides as-

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parties, including the Taiwanese manufacturer of the motorcycle tire tube. *Id.* The tire tube manufacturer filed a cross-complaint seeking indemnification against Asahi Metal, the tube valve assembly manufacturer. *Id.* While the motorcyclist's claims were settled with the parties, the indemnification action against Asahi Metal remained. *Id.* at 1030. Asahi Metal, in seeking to quash service, contested California's assertion of personal jurisdiction. *Id.* On appeal, the California Supreme Court held that, although Asahi Metal did not design or control the distribution system that enabled its products to enter California, there was a sufficient basis for jurisdiction because Asahi Metal's management was aware of the distribution methods and benefitted indirectly by the sales of products incorporating their components. *Id.* at 1031. In finding that such conduct satisfied the minimum contacts test, the court also held that jurisdiction was "fair and reasonable given California's interest in protecting its consumers. . . ." Asahi Metal Indus. Co., Ltd. v. Superior Court of California, 39 Cal. 3d 35, 55, 702 P.2d 543, 553, 216 Cal. Rptr. 385, 396 (1985).

The United States Supreme Court reversed. *Asahi Metal*, 107 S. Ct. at 1035. In an opinion written by Justice O'Connor, the Supreme Court ruled that California's assertion of personal jurisdiction over Asahi Metal violated the mandates of the due process clause. *Id.* at 1032-33. The Court held that the burden placed on the defendant was severe while that imposed on the plaintiff and California was slight. *Id.* at 1035. Therefore, the assertion of personal jurisdiction "would be unreasonable and unfair." *Id.* The Justices, however, were divided as to whether sufficient minimum contacts were established when a manufacturer places its products into the stream-of-commerce with only the knowledge that it may or may not be swept into the forum state. *Compare id.* at 1033 *with id.* at 1035 (Brennan, J., concurring in part and in the judgment).

The New Jersey appellate division, however, recently held that the stream-of-commerce theory was applicable when the only contact with the forum state was a single sale. *See* Dave's Trash Removal v. Charm City Equip. Corp., 214 N.J. Super. 497, 502, 520 A. 2d 415, 418 (App. Div. 1987). The court further held that the presence of the foreign manufacturer, whether corporate or individual, was not required in order for a state court to assert personal jurisdiction. *Id.* at 501, 520 A. 2d at 417. The court reasoned that the stream-of-commerce theory could be utilized irrespective of that stream being "only a trickle or even a drop." *Id.* at 502, 520 A. 2d at 418. In addition, the court ruled that a foreign manufacturer's assumed knowledge is sufficient for the forum state to assert personal jurisdiction. *Id.* Accordingly, the court affirmed the *Gendler* holding that a foreign manufacturer placing its products into the stream of commerce would be subject to personal jurisdiction " 'if the manufacturer knew or reasonably should have known' " that its products would, through its distribution system, be used in the state. *Id.* at 502, 520 A. 2d at 417 (quoting *Gendler*, 102 N.J. at 480, 508 A. 2d at 1137).

[132] *Gendler*, 102 N.J. at 467, 508 A.2d at 1130.

[133] *Id.* at 479, 508 A.2d at 1137.

surances that New Jersey would hold a manufacturer liable under the stream-of-commerce theory whether or not it has control of its product's distribution system.[134]

The *Gendler* decision enables New Jersey to assert the stream-of-commerce theory as a basis for asserting personal jurisdiction over a foreign manufacturer or distributor.[135] Although the lower New Jersey state courts had adopted the stream-of-commerce theory, the New Jersey Supreme Court's decision in *Gendler* now provides a basis for consistency and predictability in New Jersey litigation. Additionally, corporations who know or should have known that they are penetrating the New Jersey marketplace now have clear notice of their availability to suit in this forum.[136]

The New Jersey Supreme Court's acceptance of the stream-of-commerce theory came several years after the New Jersey lower courts and the United States Supreme Court adopted the theory.[137] The *Gendler* decision, however, is more than a belated adoption of the stream-of-commerce theory. In *World-Wide Volkswagen* and the New Jersey cases, *Certisimo* and *Coons*, the plaintiffs were individuals who suffered personal injuries. The *Gendler* court, however, was confronted with a corporation incurring a purely economic loss.[138] In extending the scope of the stream-of-commerce theory beyond personal injury, the New Jersey Supreme Court has affirmed its traditional belief that economic loss in most cases can be as devastating as personal injury.[139] Therefore, the *Gendler* decision establishes New Jersey's interest

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134 *Id.* at 480-81, 508 A.2d at 1138 ("control of [the distribution] system is not necessary to subject the manufacturer to the jurisdiction of the forum state").

135 *Id.* at 477, 508 A.2d at 1136. *See also* CONN. GEN. STAT. ANN. § 33-411(c)(3) (West 1960 & Supp. 1987); NEV. REV. STAT. ANN. § 14.-080(1) (Michie 1986); N.C. GEN. STAT. § 55-145(a)(3) (1982); 42 PA. CONS. STAT. ANN. § 5322(a)(1)(iii) (Purdon 1981); S.C. CODE ANN. § 36-2-803(1)(h) (Law. Co-op. 1976).

136 *Cf.* Hanson v. Denckla, 357 U.S. 235, 253 (1958) (requiring "that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.") (citation omitted).

137 *See supra* notes 64-106 and accompanying text (discussing *World-Wide Volkswagen*, *Certisimo*, and *Coons*).

138 *Gendler*, 102 N.J. at 482, 508 A.2d at 1139.

139 *See, e.g.*, Santor v. A. & M. Karagheusian, Inc., 44 N.J. 52, 207 A.2d 305 (1965); *see also* Note, *Commercial Entity Limited to Breach of Warranty Theory for Recovery of Economic Losses*, 17 SETON HALL L. REV. 401, 411-12 (1987).

in protecting its citizens from actions by foreign corporations regardless of the nature of the injury.

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